

107TH CONGRESS
1ST SESSION

H. R. 3016

To amend the Antiterrorism and Effective Death Penalty Act of 1996 with respect to the responsibilities of the Secretary of Health and Human Services regarding biological agents and toxins, and to amend title 18, United States Code, with respect to such agents and toxins, to clarify the application of cable television system privacy requirements to new cable services, to strengthen security at certain nuclear facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 3, 2001

Mr. TAUZIN (for himself and Mr. DINGELL) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Antiterrorism and Effective Death Penalty Act of 1996 with respect to the responsibilities of the Secretary of Health and Human Services regarding biological agents and toxins, and to amend title 18, United States Code, with respect to such agents and toxins, to clarify the application of cable television system privacy requirements to new cable services, to strengthen security at certain nuclear facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—BIOTERRORISM**
4 **PREVENTION**

5 **SEC. 101. EXPANSION OF BIOLOGICAL WEAPONS STATUTE.**

6 (a) SELECT AGENTS.—

7 (1) IN GENERAL.—Section 175 of title 18,
8 United States Code, is amended—

9 (A) by redesignating subsection (b) as sub-
10 section (c); and

11 (B) by inserting after subsection (a) the
12 following subsection:

13 “(b) SELECT AGENTS.—

14 “(1) UNSAFE HANDLING.—

15 “(A) IN GENERAL.—Whoever possesses,
16 uses, or exercises control over a select agent in
17 a manner constituting reckless disregard for the
18 public health and safety, knowing the select
19 agent to be a biological agent or toxin, shall be
20 fined under this title, imprisoned for not more
21 than one year, or both.

22 “(B) AGGRAVATED OFFENSE.—Whoever,
23 in the course of a violation of subparagraph
24 (A), causes bodily injury to another shall be
25 fined under this title, or imprisoned for not

1 more than 10 years, or both; except that if
2 death results from such violation, the person
3 committing the violation shall be fined under
4 this title, or imprisoned for any term of years
5 or for life, or both.

6 “(2) UNREGISTERED FOR POSSESSION.—Who-
7 ever knowingly possesses a biological agent or toxin
8 where such agent or toxin is a select agent for which
9 such person has not obtained a registration under
10 section 511(f) of the Antiterrorism and Effective
11 Death Penalty Act of 1996 shall be fined under this
12 title, or imprisoned for not more than 5 years, or
13 both.

14 “(3) TRANSFER TO UNREGISTERED PERSON.—
15 Whoever knowingly transfers a select agent to a per-
16 son who has not obtained a registration under sec-
17 tion 511(e) of the Antiterrorism and Effective Death
18 Penalty Act of 1996 shall be fined under this title,
19 or imprisoned for not more than 5 years, or both.

20 “(4) RESTRICTED PERSONS.—Whoever is a re-
21 stricted person and knowingly ships or transports a
22 select agent in interstate or foreign commerce, or
23 knowingly receives a select agent so shipped or
24 transported, or knowingly possesses a select agent in
25 or affecting interstate or foreign commerce, shall be

1 fined under this title, or imprisoned for not more
2 than 5 years, or both. The preceding sentence does
3 not apply with respect to any duly authorized gov-
4 ernmental activity under title V of the National Se-
5 curity Act of 1947.”.

6 (2) DEFINITIONS.—Section 175 of title 18,
7 United States Code, as amended by paragraph (1)
8 of this subsection, is amended by amending sub-
9 section (c) to read as follows:

10 “(c) DEFINITIONS.—As used in this section:

11 “(1) The terms ‘biological agent’ and ‘toxin’
12 have the meanings given such terms in section 178,
13 except that, for purposes of subsection (b), such
14 terms do not encompass any biological agent or
15 toxin that is in its naturally occurring environment,
16 if the biological agent or toxin has not been cul-
17 tivated, cultured, collected, or otherwise extracted
18 from its natural source.

19 “(2) The term ‘bodily injury’ has the meaning
20 given such term in section 1365.

21 “(3) The term “for use as a weapon” includes
22 the development, production, transfer, acquisition,
23 retention, or possession of any biological agent,
24 toxin, or delivery system, other than for prophylactic,
25 protective, or other peaceful purposes.

1 “(4)(A) The term ‘restricted person’ means a
2 person—

3 “(i) who is described in section 922(g), as
4 such section was in effect on the day before the
5 effective date of this paragraph; or

6 “(ii) who is an alien, other than an alien
7 lawfully admitted for permanent residence or an
8 alien who under subparagraph (B) is considered
9 not to be a restricted person.

10 “(B) For purposes of subparagraph (A)(ii):

11 “(i) An alien is considered not to be a re-
12 stricted person if the alien is within a category
13 designated under clause (ii) of this subpara-
14 graph.

15 “(ii) The Secretary of Health and Human
16 Services, in consultation with the Attorney Gen-
17 eral, may designate categories of individuals
18 who have—

19 “(I) nonimmigrant visas as defined in
20 section 101(a)(26) of the Immigration and
21 Nationality Act; and

22 “(II) expertise valuable to the United
23 States regarding select agents.

24 “(5) The term ‘select agent’ means a biological
25 agent or toxin, as defined in paragraph (1), that—

“(A) is on the list that is in effect pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132); and

“(B) has not been exempted from the applicability of regulations under section 511(e) of such Act.”.

(3) EFFECTIVE DATE REGARDING RESTRICTED PERSONS; REGULATIONS.—

(A) EFFECTIVE DATE.—Section 175(b)(4) of title 18, United States Code, as added by subsection (a)(1)(B) of this section, takes effect upon the expiration of the 90-day period beginning on the date of the enactment of this Act.

(B) REGULATIONS.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall determine whether the Secretary will designate any categories or individuals for purposes of section 175(c)(4)(B) of title 18, United States Code, as added by subsection (a)(1)(B) of this section. If the Secretary determines that one or more such categories will be designated, the Secretary shall promulgate an interim final

1 rule for purposes of such section not later than
 2 60 days after such date of enactment.

3 (4) CONFORMING AMENDMENT.—Section
 4 175(a) of title 18, United States Code, is amended
 5 in the second sentence by striking “under this sec-
 6 tion” and inserting “under this subsection”.

7 (b) AMENDMENTS TO ANTITERRORISM AND EFFEC-
 8 TIVE DEATH PENALTY ACT OF 1996.—

9 (1) POSSESSION AND USE.—

10 (A) IN GENERAL.—Section 511 of the
 11 Antiterrorism and Effective Death Penalty Act
 12 of 1996 (Public Law 104–132) is amended—

13 (i) by striking subsection (f);

14 (ii) by redesignating subsection (g) as
 15 subsection (i); and

16 (iii) by inserting after subsection (e)
 17 the following subsection:

18 “(f) POSSESSION AND USE OF LISTED BIOLOGICAL
 19 AGENTS AND TOXINS.—

20 “(1) IN GENERAL.—The Secretary shall by reg-
 21 ulation provide for the establishment and enforce-
 22 ment of standards and procedures governing the
 23 possession and use of biological agents and toxins
 24 listed pursuant to subsection (d)(1) in order to pro-
 25 tect the public health and safety, including safe-

1 guards to prevent access to such agents and toxins
2 for use in domestic or international terrorism or for
3 any other criminal purpose.

4 “(2) REGISTRATION.—Regulations under para-
5 graph (1) shall provide for registration requirements
6 regarding the possession and use of biological agents
7 and toxins listed pursuant to subsection (d)(1).”.

8 (B) REGULATIONS.—

9 (i) DATE CERTAIN FOR PROMULGA-
10 TION; EFFECTIVE DATE REGARDING CRIMI-
11 NAL AND CIVIL PENALTIES.—Not later
12 than 30 days after the date of the enact-
13 ment of this Act, the Secretary of Health
14 and Human Services shall promulgate an
15 interim final rule for carrying out section
16 511(f) of the Antiterrorism and Effective
17 Death Penalty Act of 1996, as added by
18 subparagraph (A) of this paragraph. Such
19 interim final rule takes effect 60 days after
20 the date on which such rule is promul-
21 gated, including for purposes of—

22 (I) section 175(b)(2) of title 18,
23 United States Code (relating to crimi-
24 nal penalties), as added by subsection
25 (a)(1)(B) of this section; and

1 (II) section 511(h) of the
2 Antiterrorism and Effective Death
3 Penalty Act of 1996 (relating to civil
4 penalties), as added by paragraph (3)
5 of this subsection.

6 (ii) SUBMISSION OF REGISTRATION
7 APPLICATIONS.—In the case of a person
8 who, as of the date of the enactment of
9 this Act, is in possession of a biological
10 agent or toxin that is listed pursuant to
11 section 511(d)(1) of the Antiterrorism and
12 Effective Death Penalty Act of 1996, such
13 person shall, in accordance with the in-
14 terim final rule promulgated under clause
15 (i), submit an application for a registration
16 to possess such agent or toxin not later
17 than 30 days after the date on which such
18 rule is promulgated.

19 (2) DISCLOSURES OF INFORMATION.—

20 (A) IN GENERAL.—Section 511 of the
21 Antiterrorism and Effective Death Penalty Act
22 of 1996, as amended by paragraph (1) of this
23 subsection, is amended by inserting after sub-
24 section (f) the following subsection:

25 “(g) DISCLOSURE OF INFORMATION.—

1 “(1) IN GENERAL.—Any information in the
2 possession of any Federal agency that identifies a
3 person, or the geographic location of a person, who
4 is registered pursuant to regulations under this sec-
5 tion (including regulations promulgated before the
6 effective date of this subsection), and any site-spe-
7 cific information relating to the type, quantity, or
8 identity of a biological agent or toxin listed pursuant
9 to subsection (d)(1) or the site-specific security
10 mechanisms in place to protect such agents and tox-
11 ins, shall not be disclosed under section 552(a) of
12 title 5, United States Code.

13 “(2) DISCLOSURES FOR PUBLIC HEALTH AND
14 SAFETY; CONGRESS.—Nothing in this section may be
15 construed as preventing the head of any Federal
16 agency—

17 “(A) from making disclosures of informa-
18 tion described in paragraph (1) for purposes of
19 protecting the public health and safety; or

20 “(B) from making disclosures of such in-
21 formation to any committee or subcommittee of
22 the Congress with appropriate jurisdiction,
23 upon request.”.

24 (B) EFFECTIVE DATE.—The effective date
25 for the amendment made by subparagraph (A)

1 shall be the same as the effective date for the
2 final rule issued pursuant to section 511(d)(1)
3 of the Antiterrorism and Effective Death Pen-
4 alty Act of 1996 (Public Law 104–132).

5 (3) CIVIL PENALTIES.—Section 511 of the
6 Antiterrorism and Effective Death Penalty Act of
7 1996, as amended by paragraphs (1) and (2) of this
8 subsection, is amended by inserting after subsection
9 (g) the following subsection:

10 “(h) CIVIL PENALTY.—Any person who violates a
11 regulation under subsection (e) or (f) shall be subject to
12 the United States for a civil penalty in an amount not
13 exceeding \$250,000 in the case of an individual and
14 \$500,000 in the case of any other person.”.

15 (4) CLARIFICATION OF SCOPE OF SELECT
16 AGENT RULE; TERRORISM; RESPONSIBILITIES OF
17 SECRETARY OF HEALTH AND HUMAN SERVICES.—

18 (A) IN GENERAL.—Section 511 of the
19 Antiterrorism and Effective Death Penalty Act
20 of 1996 (Public Law 104–132) is amended—

21 (i) in each of subsections (d) and
22 (e)—

23 (I) by inserting “and toxins”
24 after “agents” each place such term
25 appears; and

1 (II) by inserting “or toxin” after
2 “agent” each place such term ap-
3 pears; and

4 (ii) in subsection (i) (as redesignated
5 by paragraph (1) of this subsection), in
6 paragraph (1), by striking “the term ‘bio-
7 logical agent’ has” and inserting “the
8 terms ‘biological agent’ and ‘toxin’ have”.

9 (B) EFFECTIVE DATE.—The effective date
10 for the amendments made by subparagraph (A)
11 shall be as if the amendments had been in-
12 cluded in the enactment of section 511 of the
13 Antiterrorism and Effective Death Penalty Act
14 of 1996 (Public Law 104–132).

15 (5) CONFORMING AMENDMENTS.—Section 511
16 of the Antiterrorism and Effective Death Penalty
17 Act of 1996 (Public Law 104–132) is amended—

18 (A) in subsection (d)(1)(A), by striking
19 “shall, through regulations under subsection
20 (f),” and inserting “shall by regulation”;

21 (B) in subsection (e), in the matter pre-
22 ceding paragraph (1), by striking “shall,
23 through regulations under subsection (f),” and
24 inserting “shall by regulation”;

25 (C) in subsection (d)—

1 (i) in the heading for the subsection,
2 by striking “AGENTS” and inserting
3 “AGENTS AND TOXINS”; and

4 (ii) in paragraph (1), in the heading
5 for the paragraph, by striking “AGENTS”
6 and inserting “AGENTS AND TOXINS”; and

7 (D) in subsection (e), in the heading for
8 the subsection, by striking “AGENTS” and in-
9 serting “AGENTS AND TOXINS”.

10 (c) REPORT TO CONGRESS.—Not later than one year
11 after the date of the enactment of this Act, the Secretary
12 of Health and Human Services, after consultation with
13 other appropriate Federal agencies, shall submit to the
14 Congress a report that—

15 (1) describes the extent to which there has been
16 compliance by governmental and private entities
17 with applicable regulations under section 511 of the
18 Antiterrorism and Effective Death Penalty Act of
19 1996 (Public Law 104–132), including the extent of
20 compliance before the date of the enactment of this
21 Act, and including the extent of compliance with
22 regulations promulgated after such date of enact-
23 ment;

24 (2) describes the future plans of the Secretary
25 for determining compliance with regulations under

1 such section 511 and for taking appropriate enforce-
2 ment actions; and

3 (3) provides any recommendations of the Sec-
4 retary for administrative or legislative initiatives re-
5 garding such section 511.

6 **TITLE II—CABLE TELEVISION**
7 **PRIVACY PROVISIONS**

8 **SEC. 201. SCOPE OF COMMUNICATIONS ACT PROVISION.**

9 Section 631 of the Communications Act of 1934 (47
10 U.S.C. 551) is amended—

11 (1) in subsection (a)(1)(E), by striking “and
12 (h)” and inserting “and (h)(2)”;

13 (2) in subsection (a)(2), by striking “, other
14 than subsection (h)”;

15 (3) in subsection (c)(1), by inserting “and sub-
16 section (h)” after “paragraph (2)”; and

17 (4) by striking subsection (h) and inserting the
18 following:

19 “(h)(1) Except as provided in paragraph (2), nothing
20 in this section restricts, impairs, conditions, or otherwise
21 affects the authority of a government entity to obtain per-
22 sonally identifiable information concerning a subscriber
23 from a multichannel video programming distributor or
24 other person pursuant to chapters 119, 121, and 206 of
25 title 18, United States Code.

1 “(2) A government entity may obtain information col-
 2 lected and maintained by a multichannel video program-
 3 ming distributor or other person concerning the selection
 4 of video programming by a subscriber of any multichannel
 5 video programming distributor pursuant to a court order
 6 only if, in the court proceeding relevant to such court
 7 order—

8 “(A) such entity offers clear and convincing evi-
 9 dence that the subject of the information is reason-
 10 ably suspected of engaging in criminal activity and
 11 that the information sought would be material evi-
 12 dence in the case; and

13 “(B) the subject of the information is afforded
 14 the opportunity to appear and contest such entity’s
 15 claim.”.

16 **TITLE III—NUCLEAR FACILITY** 17 **SECURITY**

18 **SEC. 301. CARRYING OF FIREARMS BY LICENSEE EMPLOY-** 19 **EES.**

20 Section 161k. of the Atomic Energy Act of 1954 (42
 21 U.S.C. 2201(k)) is amended to read as follows:

22 “k. authorize such of its members, officers, and em-
 23 ployees as it deems necessary in the interest of the com-
 24 mon defense and security to carry firearms while in the

1 discharge of their official duties. The Commission may
2 also authorize—

3 “(1) such of those employees of its contractors
4 and subcontractors (at any tier) engaged in the pro-
5 tection of property under the jurisdiction of the
6 United States located at facilities owned by or con-
7 tracted to the United States or being transported to
8 or from such facilities as it deems necessary in the
9 interests of the common defense and security; and

10 “(2) such of those employees of persons licensed
11 or certified by the Commission (including employees
12 of contractors of licensees or certificate holders) en-
13 gaged in the protection of property of (A) facilities
14 owned or operated by a Commission licensee or cer-
15 tificate holder that are designated by the Commis-
16 sion, or (B) property of significance to the common
17 defense and security located at facilities owned or
18 operated by a Commission licensee or certificate
19 holder or being transported to or from such facili-
20 ties;

21 to carry firearms while in the discharge of their official
22 duties. A person authorized to carry firearms under this
23 subsection may, while in the performance of, and in con-
24 nection with, official duties, make arrests without warrant
25 for any offense against the United States committed in

1 that person's presence or for any felony cognizable under
2 the laws of the United States if that person has reasonable
3 grounds to believe that the individual to be arrested has
4 committed or is committing such felony. An employee of
5 a contractor or subcontractor or of a Commission licensee
6 or certificate holder (or a contractor of a licensee or cer-
7 tificate holder) authorized to carry firearms under this
8 subsection may make such arrests only when the indi-
9 vidual to be arrested is within, or in direct flight from,
10 the area of such offense. A person granted authority to
11 make arrests by this subsection may exercise that author-
12 ity only in the enforcement of laws regarding the property
13 of the United States in the custody of the Department
14 of Energy, the Nuclear Regulatory Commission, or a con-
15 tractor of the Department of Energy or Nuclear Regu-
16 latory Commission or of a licensee or certificate holder of
17 the Commission, laws applicable to facilities owned or op-
18 erated by a Commission licensee or certificate holder that
19 are designated by the Commission pursuant to this sub-
20 section and property of significance to the common de-
21 fense and security that is in the custody of a licensee or
22 certificate holder or a contractor of a licensee or certificate
23 holder of the Commission, or any provision of this Act that
24 may subject an offender to a fine, imprisonment, or both.
25 The arrest authority conferred by this subsection is in ad-

dition to any arrest authority under other laws. The Secretary and the Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection;”.

SEC. 302. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.

Section 229a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended by adding after “custody of the Commission” the following: “or subject to its licensing authority or to certification by the Commission under this Act or any other Act”.

SEC. 303. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.

Section 236a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended to read as follows:

“a. Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to—

“(1) any production facility or utilization facility licensed under this Act;

“(2) any nuclear waste storage, treatment, or disposal facility licensed under this Act;

“(3) any nuclear fuel for a utilization facility licensed under this Act or any spent nuclear fuel from such a facility;

1 “(4) any uranium enrichment or nuclear fuel
2 fabrication facility licensed or certified by the Nu-
3 clear Regulatory Commission; or

4 “(5) any production, utilization, waste storage,
5 waste treatment, waste disposal, uranium enrich-
6 ment, or nuclear fuel fabrication facility subject to
7 licensing or certification under this Act during its
8 construction where the destruction or damage
9 caused or attempted to be caused could affect public
10 health and safety during the operation of the facil-
11 ity,

12 shall be fined not more than \$1,000,000 or imprisoned
13 for up to life in prison without parole, or both.”.

14 **SEC. 304. ASSESSMENT OF VULNERABILITIES.**

15 The Nuclear Regulatory Commission shall conduct a
16 study to assess the vulnerability of nuclear facilities cer-
17 tified by the Nuclear Regulatory Commission to potential
18 terrorist attacks. The study shall include—

19 (1) an assessment of the design basis threat;

20 (2) an assessment of potential vulnerability of
21 various classes of such facilities;

22 (3) an identification of important protection
23 measures for both the near term and long term;

24 (4) an assessment of physical, cyber, bio-
25 chemical, and other terrorist threats; and

1 (5) recommendations for additional studies, re-
2 search and development, testing, and protections re-
3 quired to address the threats identified.

4 An initial report identifying immediate concerns and pro-
5 tection measures shall be transmitted to the Congress not
6 later than 90 days after the date of the enactment of this
7 Act. A final report on the study shall be transmitted to
8 the Congress not later than 270 days after the date of
9 the enactment of this Act.

10 **SEC. 305. DESIGN BASIS THREAT.**

11 (a) AMENDMENT.—Chapter 14 of the Atomic Energy
12 Act of 1954 (42 U.S.C. 2201–2210b) is amended by add-
13 ing at the end the following new section:

14 “SEC. 170C. DESIGN BASIS THREAT.—

15 “a. The Nuclear Regulatory Commission, not later
16 than 60 days after the date of the enactment of this sec-
17 tion, after consultation with the Secretary of Defense, the
18 Director of Central Intelligence, the Director of the Fed-
19 eral Bureau of Investigation, the National Security Advi-
20 sor, the Director of Homeland Security (or any successor
21 official), and any other appropriate Federal, State, or non-
22 governmental entities, shall commence a rulemaking to
23 consider changes to the design basis threat for facilities
24 licensed by the Commission under this Act. Within 1 year
25 after the date of the enactment of this section, the Com-

1 mission shall issue a final rule revising the design basis
2 threat and associated regulations.

3 “b. Regulations issued under this section shall take
4 into account—

5 “(1) the events of September 11, 2001;

6 “(2) the potential for attack on facilities by
7 multiple coordinated teams totaling in the aggregate
8 at least 20 individuals;

9 “(3) the potential for assistance in an attack
10 from several persons employed at the facility;

11 “(4) the potential for suicide attacks;

12 “(5) water-based and air-based threats;

13 “(6) the potential use of explosive devices of
14 considerable size and other modern weaponry;

15 “(7) the potential for attacks by persons with
16 a sophisticated knowledge of facility operations;

17 “(8) the threat of fires, especially fires of long
18 duration; and

19 “(9) protection of spent fuel storage pools and
20 dry cask storage, including after reactor closure.

21 “c. Regulations issued under this section shall estab-
22 lish requirements for licensees relating to construction, op-
23 eration, security procedures, and emergency response, and
24 shall require conforming amendments to existing licenses.

1 “d. Regulations issued under this section shall re-
2 quire armed escorts for all spent fuel shipments, capable
3 of repelling attacks by a large number of attackers work-
4 ing as several coordinated teams and using sophisticated
5 techniques and equipment.

6 “e. (1) Regulations issued under this section shall in-
7 clude the establishment of an Operational Safeguards Re-
8 sponse Evaluation program, whose Director shall report
9 directly to the Nuclear Regulatory Commission, which
10 shall ensure that the operational safeguards response of
11 each facility described in paragraph (2) is tested at least
12 once every 2 years to determine whether the design basis
13 threat factors identified in regulations issued under this
14 section have been adequately addressed.

15 “(2) Facilities subject to testing under paragraph (1)
16 include commercial nuclear powerplants, research reac-
17 tors, spent fuel storage facilities and associated support
18 facilities and equipment, and any other licensed facility
19 the Nuclear Regulatory Commission considers appro-
20 priate.

21 “f. Regulations issued under this section shall be re-
22 viewed and revised as appropriate at least once every 5
23 years.”.

1 (b) TABLE OF SECTIONS AMENDMENT.—The table of
2 sections for chapter 14 of the Atomic Energy Act of 1954
3 is amended by adding at the end the following new item:

“Sec. 170C. Design basis threat.”.

